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APR 19 2007

In re Application of
Stephen M. Bisque et al.
Application No. 10/041,971
Filed: January 2, 2002
Attorney Docket No. **BISQUE-APP**

OFFICE OF PETITIONS

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:
: **DECISION ON PETITION**
: **UNDER 37 CFR 1.78(a)(6)**
:

This is a decision on the petition under 37 CFR 1.78(a)(6), filed February 5, 2007 to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

- (1) the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i) to the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

Additionally, the instant nonprovisional application must be pending at the time of filing of the reference to the prior-filed provisional application as required by 37 CFR 1.78(a)(5)(iii). Further, the nonprovisional application claiming the benefit of the prior-filed provisional application must have been filed within twelve months of the filing date of the prior-filed provisional application.

The amendment submitted concurrently with the instant petition as drafted is unacceptable and, therefore, is not considered a proper reference under 37 CFR 1.78(a)(5)(i). In this regard, the amended specification reads ".....is based on an earlier filed provisional patent application, serial number 60/264,302, filed on January 29, 2001....."

A proper reference is, ".....claims the benefit of provisional patent application"

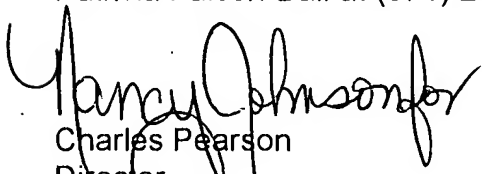
Before the petition under 37 CFR § 1.78(a)(6) can be granted, a renewed petition and either an Application Data Sheet or a substitute amendment (complying with the provisions of 37 1.78(a)(5)(i)) to correct the above matters is required.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
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Any questions concerning this matter may be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.


Charles Pearson
Director,
Office of Petitions